

FIRST REGULAR SESSION

# HOUSE BILL NO. 476

## 91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FROELKER.

Read 1<sup>st</sup> time January 22, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

1388L.011

### AN ACT

To repeal sections 302.302, 488.5334, 577.021, 577.023, 577.037, 577.039, 577.041, and 577.049, RSMo 2000, relating to public safety offenses, and to enact in lieu thereof nine new sections relating to the same subject, with penalty provisions.

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 302.302, 488.5334, 577.021, 577.023, 577.037, 577.039, 577.041, and 577.049, RSMo 2000, are repealed and nine new sections enacted in lieu thereof, to be known as sections 302.302, 488.5334, 577.014, 577.021, 577.023, 577.037, 577.039, 577.041, and 577.049, to read as follows:

302.302. 1. The director of revenue shall put into effect a point system for the suspension and revocation of licenses. Points shall be assessed only after a conviction or forfeiture of collateral. The initial point value is as follows:

(1) Any moving violation of a state law or county or municipal or federal traffic ordinance or regulation not listed in this section, other than a violation of vehicle equipment provisions or a court-ordered supervision as provided in section 302.303 . . . . . 2 points

(except any violation of municipal stop sign ordinance where no accident is involved . . . . . 1 point)

(2) Speeding  
In violation of a state law . . . . . 3 points

In violation of a county or municipal ordinance . . . . . 2 points

(3) Leaving the scene of an accident in violation of section 577.060, RSMo . . . . . 12 points

**EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

- 14 In violation of any county or municipal ordinance ..... 6 points
- 15 (4) Careless and imprudent driving in violation of subsection 4 of
- 16 section 304.016, RSMo ..... 4 points
- 17 In violation of a county or municipal ordinance ..... 2 points
- 18 (5) Operating without a valid license in violation of subdivision (1) or (2) of subsection
- 19 1 of section 302.020:
- 20 (a) For the first conviction ..... 2 points
- 21 (b) For the second conviction ..... 4 points
- 22 (c) For the third conviction ..... 6 points
- 23 (6) Operating with a suspended or revoked license prior to restoration of operating
- 24 privileges ..... 12 points
- 25 (7) Obtaining a license by misrepresentation ..... 12 points
- 26 (8) For the first conviction of driving while in an intoxicated condition or under the
- 27 influence of controlled substances or drugs ..... 8 points
- 28 (9) For the second or subsequent conviction of any of the following offenses however
- 29 combined: driving while in an intoxicated condition, driving under the influence of controlled
- 30 substances or drugs [or], driving with a blood alcohol content of ten-hundredths of one percent
- 31 or more by weight **or driving with a blood alcohol content of fifteen-hundredths of one**
- 32 **percent or more by weight** ..... 12 points
- 33 (10) For the first conviction for driving with blood alcohol content ten-hundredths of one
- 34 percent or more by weight **or driving with a blood alcohol content of fifteen-hundredths of**
- 35 **one percent or more by weight**
- 36 In violation of state law ..... 8 points
- 37 In violation of a county or municipal ordinance or federal law or regulation . 8 points
- 38 (11) Any felony involving the use of a motor vehicle ..... 12 points
- 39 (12) Knowingly permitting unlicensed operator to operate a motor vehicle . 4 points
- 40 (13) For a conviction for failure to maintain financial responsibility pursuant to county
- 41 or municipal ordinance or pursuant to section 303.025, RSMo ..... 4 points
- 42 2. The director shall, as provided in subdivision (5) of subsection 1 of this section, assess
- 43 an operator points for a conviction pursuant to subdivision (1) or (2) of subsection 1 of section
- 44 302.020, when the director issues such operator a license or permit pursuant to the provisions
- 45 of sections 302.010 to 302.340.
- 46 3. An additional two points shall be assessed when personal injury or property damage
- 47 results from any violation listed in subsection 1 of this section and if found to be warranted and
- 48 certified by the reporting court.
- 49 4. When any of the acts listed in subdivision (2), (3), (4) or (8) of subsection 1 of this

50 section constitutes both a violation of a state law and a violation of a county or municipal  
51 ordinance, points may be assessed for either violation but not for both. Notwithstanding that an  
52 offense arising out of the same occurrence could be construed to be a violation of subdivisions  
53 (8), (9) and (10) of subsection 1 of this section, no person shall be tried or convicted for more  
54 than one offense pursuant to subdivisions (8), (9) and (10) of subsection 1 of this section for  
55 offenses arising out of the same occurrence.

56         5. The director of revenue shall put into effect a system for staying the assessment of  
57 points against an operator. The system shall provide that the satisfactory completion of a  
58 driver-improvement program or, in the case of violations committed while operating a  
59 motorcycle, a motorcycle- rider training course approved by the director of the department of  
60 public safety, by an operator, when so ordered and verified by any court having jurisdiction over  
61 any law of this state or county or municipal ordinance, regulating motor vehicles, other than a  
62 violation committed in a commercial motor vehicle as defined in section 302.700, shall be  
63 accepted by the director in lieu of the assessment of points for a violation pursuant to subdivision  
64 (1), (2), or (4) of subsection 1 of this section or pursuant to subsection 3 of this section. For the  
65 purposes of this subsection, the driver-improvement program shall meet or exceed the standards  
66 of the National Safety Council's eight-hour "Defensive Driving Course" or, in the case of a  
67 violation which occurred during the operation of a motorcycle, the program shall meet the  
68 standards established by the director of the department of public safety pursuant to sections  
69 302.133 to 302.138. The completion of a driver-improvement program or a motorcycle-rider  
70 training course shall not be accepted in lieu of points more than one time in any thirty-six-month  
71 period and shall be completed within sixty days of the date of conviction in order to be accepted  
72 in lieu of the assessment of points. Every court having jurisdiction pursuant to the provisions  
73 of this subsection shall, within fifteen days after completion of the driver-improvement program  
74 or motorcycle-rider training course by an operator, forward a record of the completion to the  
75 director, all other provisions of the law to the contrary notwithstanding. The director shall  
76 establish procedures for record keeping and the administration of this subsection.

2         488.5334. Upon a plea of guilty or a finding of guilty for an offense of violating the  
3 provisions of section 577.010 [or], 577.012, **or 577.014**, RSMo, or violations of county or  
4 municipal ordinances involving alcohol or drug- related traffic offenses, the court may, in  
5 addition to imposition of any penalties provided by law, order the convicted person to reimburse  
6 the state or local law enforcement agency which made the arrest for the costs associated with  
7 such arrest. Such costs shall include the reasonable cost of making the arrest, including the cost  
8 of any chemical test made [under] **pursuant to** chapter 577, RSMo, to determine the alcohol or  
9 drug content of the person's blood, and the costs of processing, charging, booking and holding  
such person in custody. The state and each local law enforcement agency may establish a

10 schedule of such costs; however, the court may order the costs reduced if it determines that the  
11 costs are excessive.

**577.014. 1. A person commits the crime of "driving with extreme blood alcohol content" if such person operates a motor vehicle in this state with fifteen-hundredths of one percent or more by weight of alcohol in such person's blood.**

**2. As used in this section, percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred milliliters of blood or two hundred ten liters of breath and may be shown by chemical analysis of the person's blood, breath, saliva or urine. For purposes of determining the alcoholic content of a person's blood pursuant to this section, the test shall be conducted pursuant to the provisions of sections 577.020 to 577.041.**

**3. For the first offense, driving with extreme blood alcohol content is a class A misdemeanor.**

577.021. A member of the state highway patrol may, prior to arrest, administer a chemical test to any person suspected of operating a motor vehicle in violation of section 577.010 [or], 577.012 **or 577.014**. A test administered pursuant to this section shall be admissible as evidence of probable cause to arrest and as exculpatory evidence, but shall not be admissible as evidence of blood alcohol content. The provisions of section 577.020 shall not apply to a test administered prior to arrest pursuant to this section.

577.023. 1. For purposes of this section, unless the context clearly indicates otherwise:  
(1) An "intoxication-related traffic offense" is driving while intoxicated, driving with excessive blood alcohol content, **driving with extreme blood alcohol content**, involuntary manslaughter pursuant to subdivision (2) of subsection 1 of section 565.024, RSMo, assault in the second degree pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law enforcement officer in the second degree pursuant to subdivision (3) of subsection 1 of section 565.082, RSMo, or driving under the influence of alcohol or drugs in violation of state law or a county or municipal ordinance, where the judge in such case was an attorney and the defendant was represented by or waived the right to an attorney in writing;

(2) A "persistent offender" is one of the following:

(a) A person who has pleaded guilty to or has been found guilty of two or more intoxication-related traffic offenses, where such two or more offenses occurred within ten years of the occurrence of the intoxication-related traffic offense for which the person is charged;

(b) A person who has pleaded guilty to or has been found guilty of involuntary manslaughter pursuant to subsection 1 of section 565.024, RSMo, assault in the second degree pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law enforcement officer in the second degree pursuant to subdivision (3) of subsection 1 of section

18 565.082, RSMo; and

19 (3) A "prior offender" is a person who has pleaded guilty to or has been found guilty of  
20 one intoxication-related traffic offense, where such prior offense occurred within five years of  
21 the occurrence of the intoxication-related traffic offense for which the person is charged.

22 2. Any person who pleads guilty to or is found guilty of a violation of section 577.010  
23 or 577.012 who is alleged and proved to be a prior offender [shall be] **is** guilty of a class A  
24 misdemeanor. **Any person who pleads guilty to or is found guilty of a violation of section**  
25 **577.014 who is alleged and proved to be a prior offender is guilty of a class D felony.**

26 3. Any person who pleads guilty to or is found guilty of a violation of section 577.010  
27 or 577.012 who is alleged and proved to be a persistent offender [shall be] **is** guilty of a class D  
28 felony. **Any person who pleads guilty to or is found guilty of a violation of section 577.014**  
29 **who is alleged and proved to be a persistent offender is guilty of a class C felony.**

30 4. No court shall suspend the imposition of sentence as to a prior or persistent offender  
31 [under] **pursuant to** this section nor sentence such person to pay a fine in lieu of a term of  
32 imprisonment, section 557.011, RSMo, to the contrary notwithstanding, nor shall such person  
33 be eligible for parole or probation until [he] **such person** has served a minimum of forty-eight  
34 consecutive hours' imprisonment, unless as a condition of such parole or probation such person  
35 performs at least ten days of community service under the supervision of the court in those  
36 jurisdictions which have a recognized program for community service.

37 5. The court shall find the defendant to be a prior offender or persistent offender, if:

38 (1) The indictment or information, original or amended, or the information in lieu of an  
39 indictment pleads all essential facts warranting a finding that the defendant is a prior offender  
40 or persistent offender; and

41 (2) Evidence is introduced that establishes sufficient facts pleaded to warrant a finding  
42 beyond a reasonable doubt the defendant is a prior offender or persistent offender; and

43 (3) The court makes findings of fact that warrant a finding beyond a reasonable doubt  
44 by the court that the defendant is a prior offender or persistent offender.

45 6. In a jury trial, the facts shall be pleaded, established and found prior to submission to  
46 the jury outside of its hearing.

47 7. In a trial without a jury or upon a plea of guilty, the court may defer the proof in  
48 findings of such facts to a later time, but prior to sentencing.

49 8. The defendant shall be accorded full rights of confrontation and cross-examination,  
50 with the opportunity to present evidence, at such hearings.

51 9. The defendant may waive proof of the facts alleged.

52 10. Nothing in this section shall prevent the use of presentence investigations or  
53 commitments.

54           11. At the sentencing hearing both the state and the defendant shall be permitted to  
55 present additional information bearing on the issue of sentence.

56           12. The pleas or findings of guilty shall be prior to the date of commission of the present  
57 offense.

58           13. The court shall not instruct the jury as to the range of punishment or allow the jury,  
59 upon a finding of guilty, to assess and declare the punishment as part of its verdict in cases of  
60 prior offenders or persistent offenders.

61           14. Evidence of prior convictions shall be heard and determined by the trial court out of  
62 the hearing of the jury prior to the submission of the case to the jury, and shall include but not  
63 be limited to evidence of convictions received by a search of the records of the Missouri uniform  
64 law enforcement system maintained by the Missouri state highway patrol. After hearing the  
65 evidence, the court shall enter its findings thereon. A conviction of a violation of a municipal or  
66 county ordinance in a county or municipal court for driving while intoxicated or a conviction or  
67 a plea of guilty or a finding of guilty followed by a suspended imposition of sentence, suspended  
68 execution of sentence, probation or parole or any combination thereof in a state court shall be  
69 treated as a prior conviction.

          577.037. 1. Upon the trial of any person for violation of any of the provisions of section  
2 565.024, RSMo, or section 565.060, RSMo, or section 577.010 [or], 577.012 **or 577.014**, or  
3 upon the trial of any criminal action or violations of county or municipal ordinances or in any  
4 license suspension or revocation proceeding pursuant to the provisions of chapter 302, RSMo,  
5 arising out of acts alleged to have been committed by any person while driving a motor vehicle  
6 while in an intoxicated condition, the amount of alcohol in the person's blood at the time of the  
7 act alleged as shown by any chemical analysis of the person's blood, breath, saliva or urine is  
8 admissible in evidence and the provisions of subdivision (5) of section 491.060, RSMo, shall not  
9 prevent the admissibility or introduction of such evidence if otherwise admissible. If there was  
10 ten-hundredths of one percent or more by weight of alcohol in the person's blood, this shall be  
11 prima facie evidence that the person was intoxicated at the time the specimen was taken.

12           2. Percent by weight of alcohol in the blood shall be based upon grams of alcohol per  
13 one hundred milliliters of blood or grams of alcohol per two hundred ten liters of breath.

14           3. The foregoing provisions of this section shall not be construed as limiting the  
15 introduction of any other competent evidence bearing upon the question whether the person was  
16 intoxicated.

17           4. A chemical analysis of a person's breath, blood, saliva or urine, in order to give rise  
18 to the presumption or to have the effect provided for in subsection 1 of this section, shall have  
19 been performed as provided in sections 577.020 to 577.041 and in accordance with methods and  
20 standards approved by the state department of health.

21           5. Any charge alleging a violation of section 577.010 [or], 577.012 **or 577.014** or any  
22 county or municipal ordinance prohibiting driving while intoxicated or driving under the  
23 influence of alcohol shall be dismissed with prejudice if a chemical analysis of the defendant's  
24 breath, blood, saliva, or urine performed in accordance with sections 577.020 to 577.041 and  
25 rules promulgated thereunder by the state department of health demonstrate that there was less  
26 than ten-hundredths of one percent of alcohol in the defendant's blood unless one or more of the  
27 following considerations cause the court to find a dismissal unwarranted:

28           (1) There is evidence that the chemical analysis is unreliable as evidence of the  
29 defendant's intoxication at the time of the alleged violation due to the lapse of time between the  
30 alleged violation and the obtaining of the specimen;

31           (2) There is evidence that the defendant was under the influence of a controlled  
32 substance, or drug, or a combination of either or both with or without alcohol; or

33           (3) There is substantial evidence of intoxication from physical observations of witnesses  
34 or admissions of the defendant.

          577.039. An arrest without a warrant by a law enforcement officer, including a  
2 uniformed member of the state highway patrol, for a violation of section 577.010 [or], 577.012  
3 **or 577.014** is lawful whenever the arresting officer has reasonable grounds to believe that the  
4 person to be arrested has violated the section, whether or not the violation occurred in the  
5 presence of the arresting officer and when such arrest without warrant is made within one and  
6 one-half hours after such claimed violation occurred, unless the person to be arrested has left the  
7 scene of an accident or has been removed from the scene to receive medical treatment, in which  
8 case such arrest without warrant may be made more than one and one-half hours after such  
9 violation occurred.

          577.041. 1. If a person under arrest, or who has been stopped pursuant to subdivision  
2 (2) or (3) of subsection 1 of section 577.020, refuses upon the request of the officer to submit to  
3 any test allowed pursuant to section 577.020, then none shall be given and evidence of the refusal  
4 shall be admissible in a proceeding pursuant to section 565.024 or 565.060, RSMo, or section  
5 577.010 [or], 577.012 **or 577.014**. The request of the officer shall include the reasons of the  
6 officer for requesting the person to submit to a test and also shall inform the person that evidence  
7 of refusal to take the test may be used against such person and that the person's license shall be  
8 immediately revoked upon refusal to take the test. If a person when requested to submit to any  
9 test allowed pursuant to section 577.020 requests to speak to an attorney, the person shall be  
10 granted twenty minutes in which to attempt to contact an attorney. If upon the completion of the  
11 twenty-minute period the person continues to refuse to submit to any test, it shall be deemed a  
12 refusal. In this event, the officer shall, on behalf of the director of revenue, serve the notice of  
13 license revocation personally upon the person and shall take possession of any license to operate

14 a motor vehicle issued by this state which is held by that person. The officer shall issue a  
15 temporary permit, on behalf of the director of revenue, which is valid for fifteen days and shall  
16 also give the person a notice of such person's right to file a petition for review to contest the  
17 license revocation.

18 2. The officer shall make a sworn report to the director of revenue, which shall include  
19 the following:

20 (1) That the officer has:

21 (a) Reasonable grounds to believe that the arrested person was driving a motor vehicle  
22 while in an intoxicated or drugged condition; or

23 (b) Reasonable grounds to believe that the person stopped, being under the age of  
24 twenty-one years, was driving a motor vehicle with a blood alcohol content of two-hundredths  
25 of one percent or more by weight; or

26 (c) Reasonable grounds to believe that the person stopped, being under the age of  
27 twenty-one years, was committing a violation of the traffic laws of the state, or political  
28 subdivision of the state, and such officer has reasonable grounds to believe, after making such  
29 stop, that the person had a blood alcohol content of two-hundredths of one percent or greater;

30 (2) That the person refused to submit to a chemical test;

31 (3) Whether the officer secured the license to operate a motor vehicle of the person;

32 (4) Whether the officer issued a fifteen-day temporary permit;

33 (5) Copies of the notice of revocation, the fifteen-day temporary permit and the notice  
34 of the right to file a petition for review, which notices and permit may be combined in one  
35 document; and

36 (6) Any license to operate a motor vehicle which the officer has taken into possession.

37 3. Upon receipt of the officer's report, the director shall revoke the license of the person  
38 refusing to take the test for a period of one year; or if the person is a nonresident, such person's  
39 operating permit or privilege shall be revoked for one year; or if the person is a resident without  
40 a license or permit to operate a motor vehicle in this state, an order shall be issued denying the  
41 person the issuance of a license or permit for a period of one year.

42 4. If a person's license has been revoked because of the person's refusal to submit to a  
43 chemical test, such person may petition for a hearing before a circuit or associate circuit court  
44 in the county in which the arrest or stop occurred. The person may request such court to issue  
45 an order staying the revocation until such time as the petition for review can be heard. If the  
46 court, in its discretion, grants such stay, it shall enter the order upon a form prescribed by the  
47 director of revenue and shall send a copy of such order to the director. Such order shall serve  
48 as proof of the privilege to operate a motor vehicle in this state and the director shall maintain  
49 possession of the person's license to operate a motor vehicle until termination of any revocation

50 pursuant to this section. Upon the person's request the clerk of the court shall notify the  
51 prosecuting attorney of the county and the prosecutor shall appear at the hearing on behalf of the  
52 director of revenue. At the hearing the court shall determine only:

53 (1) Whether or not the person was arrested or stopped;

54 (2) Whether or not the officer had:

55 (a) Reasonable grounds to believe that the person was driving a motor vehicle while in  
56 an intoxicated or drugged condition; or

57 (b) Reasonable grounds to believe that the person stopped, being under the age of  
58 twenty-one years, was driving a motor vehicle with a blood alcohol content of two-hundredths  
59 of one percent or more by weight; or

60 (c) Reasonable grounds to believe that the person stopped, being under the age of  
61 twenty-one years, was committing a violation of the traffic laws of the state, or political  
62 subdivision of the state, and such officer had reasonable grounds to believe, after making such  
63 stop, that the person had a blood alcohol content of two-hundredths of one percent or greater; and

64 (3) Whether or not the person refused to submit to the test.

65 5. If the court determines any issue not to be in the affirmative, the court shall order the  
66 director to reinstate the license or permit to drive.

67 6. Requests for review as provided in this section shall go to the head of the docket of  
68 the court wherein filed.

69 7. No person who has had a license to operate a motor vehicle suspended or revoked  
70 pursuant to the provisions of this section shall have that license reinstated until such person has  
71 participated in and successfully completed a substance abuse traffic offender program defined  
72 in section 577.001, except the department or the court may waive such requirement upon  
73 completion of a comparable program or upon good cause shown or the court may waive such  
74 requirement upon good cause shown. The court in making this determination shall consider the  
75 person's driving record, the circumstances surrounding the offense and the likelihood of the  
76 person committing a like offense in the future. Assignment recommendations, based upon the  
77 needs assessment as described in subdivision (21) of section 302.010, RSMo, shall be delivered  
78 in writing to the person with written notice that the person is entitled to have such assignment  
79 recommendations reviewed by the court if the person objects to the recommendations. The  
80 person may file a motion in the associate division of the circuit court, on a printed form provided  
81 by the state courts administrator, to have the court hear and determine such motion pursuant to  
82 the provisions of chapter 517, RSMo, after reviewing such assessment. The motion shall name  
83 the person or entity making the needs assessment as the respondent and a copy of the motion  
84 shall be served upon the respondent in any manner allowed by law. Such assessment and  
85 compliance with the court determination of the motion shall satisfy the provisions of this section

86 for the purpose of reinstating such person's license to operate a motor vehicle. The respondent's  
87 personal appearance at any hearing conducted pursuant to this subsection shall not be necessary  
88 unless directed by the court.

89         8. The fees for the substance abuse traffic offender program, or a portion thereof to be  
90 determined by the division of alcohol and drug abuse of the department of mental health, shall  
91 be paid by the person enrolled in the program. Any person who is enrolled in the program shall  
92 pay, in addition to any fee charged for the program, a supplemental fee of sixty dollars. The  
93 administrator of the program shall remit to the division of alcohol and drug abuse of the  
94 department of mental health the supplemental fee for all persons enrolled in the program, less  
95 two percent for administrative costs. The supplemental fees received by the department of  
96 mental health pursuant to this section shall be deposited in the mental health earnings fund which  
97 is created in section 630.053, RSMo.

577.049. 1. Upon a plea of guilty or a finding of guilty for an offense of violating the  
2 provisions of section 577.010 [or], 577.012 or **577.014** or violations of county or municipal  
3 ordinances involving alcohol or drug related traffic offenses, the court shall order the person to  
4 participate in and successfully complete a substance abuse traffic offender program defined in  
5 section 577.001.

6         2. The fees for the substance abuse traffic offender program, or a portion thereof, to be  
7 determined by the division of alcohol and drug abuse of the department of mental health, shall  
8 be paid by the person enrolling in the program. Any person who attends the program shall pay,  
9 in addition to any fee charged for the program, a supplemental fee of sixty dollars. The  
10 administrator of the program shall remit to the division of alcohol and drug abuse of the  
11 department of mental health the supplemental fees for all persons enrolled in the program, less  
12 two percent for administrative costs. The supplemental fees received by the department of  
13 mental health pursuant to this section shall be deposited in the mental health earnings fund which  
14 is created in section 630.053, RSMo.